

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**NIRAL PATEL, individually and on behalf
of all others similarly situated,**

Plaintiffs,

v.

7-ELEVEN, INC.,

Defendant.

Case No. 1:18-cv-07010

Judge Mary M. Rowland

Magistrate Judge Maria Valdez

**7-ELEVEN, INC.’S MOTION TO DISMISS PLAINTIFF’S AMENDED COMPLAINT
PURSUANT TO FED. R. CIV. P. RULE 12(b)(6)**

Defendant 7-Eleven, Inc. (“7-Eleven”), by its undersigned attorneys, respectfully moves this Court to enter an Order dismissing Plaintiff Niral Patel’s (“Plaintiff”) First Amended Complaint (“Amended Complaint,” Dkt. 43) with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

On August 5, 2019, the Court dismissed Plaintiff’s one-count complaint alleging that 7-Eleven violated the Illinois Wage Payment and Collection Act (“IWPCA”), 820 ILCS § 115, *et seq.*, because: (1) the Court concluded that Plaintiff had not alleged that 7-Eleven ever agreed to pay him “wages” under an employment contract or agreement; and (2) the Court observed that the only entity with whom 7-Eleven actually has a franchise relationship is the entity that Plaintiff formed to own and operate his franchise, Shanti 11 Incorporated, and Plaintiff failed to allege that he had any agreement with 7-Eleven distinct and apart from the franchise agreement between 7-Eleven and Shanti 11. (“Order,” Dkt. 40, at 7–8.)

The Amended Complaint that Plaintiff filed on August 26, 2019 does nothing to address either of the flaws that led this Court to dismiss its predecessor. The only allegations that Plaintiff

added to his Amended Complaint are *the same arguments* this Court addressed—and correctly rejected as insufficient—in its Order: “The bottom line is that Patel has failed to plead any agreement to pay wages—formal or informal—between himself and 7-Eleven, so his IWPCA claim must be dismissed.” (Order at 10.) Plaintiff, again, has not stated a claim under the IWPCA. His Amended Complaint should be dismissed, with prejudice.

WHEREFORE, 7-Eleven respectfully requests that this Court enter an order dismissing Plaintiff’s Amended Complaint with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Dated: September 16, 2019

By: s/ Amy M. Rubenstein
Attorney for Defendant 7-Eleven, Inc.

Norman M. Leon (#6239480)
Amy M. Rubenstein (#6278353)
Emily D. Gilman (#6317338)
DLA PIPER LLP (US)
444 West Lake Street, Suite 900
Chicago, Illinois 60606
(312) 368-4000

CERTIFICATE OF SERVICE

Amy M. Rubenstein, an attorney, certifies that on September 16, 2019, she caused the foregoing **7-ELEVEN, INC.'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT PURSUANT TO FED. R. CIV. P. RULE 12(b)(6)** to be filed electronically with the court. Notice of this filing will be sent by operation of the Court's electronic filing system to all ECF registered parties. Parties may access this filing through the Court's CM/ECF system.

s/ Amy M. Rubenstein
Amy M. Rubenstein